SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1933

No. 171

THE UNITED STATES, PETITIONER

vs.

JEFFERSON ELECTRIC MANUFACTURING COMPANY

ON PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF CLAIMS

INDEX

	Original	Print
Record from Court of Claims	1	1
Petition	1	1
Exhibit A—Claim for refund	11	6
B—Claim for refund	15	8
C—Claim for refund	19	10
History of proceedings	21	12
Opinion of the court on demurrer, Littleton, J	21	12
General traverse	23	14
Defendant's counterclaim	24	14
Change of attorneys of record	27	15
Argument and submission of case	27	15
Special findings of fact	28	16
Conclusion of law	31	19
Opinion, Whaley, J	31	19
Judgment	33	20
Clerk's certificate (omitted in printing)	34	21
Order allowing certiorari		22

1 In the Court of Claims

No. K-94

JEFFERSON ELECTRIC MANUFACTURING CO., PLAINTIFF

v.

THE UNITED STATES OF AMERICA, DEFENDANT

I. *Petition*

Filed March 25, 1929

To the Honorable Court of Claims:

The plaintiff, the Jefferson Electric Manufacturing Company, respectfully represents:

I

That it is and was at all times hereinafter mentioned a corporation organized and doing business under the laws of the State of Illinois, with principal offices in the City of Chicago, county of Cook, State of Illinois.

II

That no action has been taken upon this claim other than herein set forth before Congress or any department of the Government, or in any court; that no person other than the claimant is the owner thereof or interested therein; that no assignment or transfer of this claim, or any part thereof, or interest therein, has been made; that the claimant has not in any way voluntarily aided, abetted or given encouragement to rebellion against the Government of the United States.

2 III

That this suit arises under the revenue laws of the United States and is for the recovery of manufacturer's excise taxes illegally and erroneously assessed against and collected from the plaintiff by the defendant under the alleged authority of section 900 of the revenue acts of 1918 and 1921, and sec. 600 of the Revenue act of 1924.

IV

That the plaintiff is now, and has been at all times herein mentioned, engaged in the manufacture and sale of ignition coils and that, pursuant to the requirements of the Commissioner of Internal Revenue, it filed monthly lists of sales and, in order to avoid the

imposition of penalties against it and the distraint of its property, involuntarily paid to the Collector of Internal Revenue for the first collection district of Illinois, at Chicago, Illinois, the manufacturer's excise tax levied on automobile parts or accessories by the statutes aforesaid, on all the ignition coils manufactured and sold by it during the period February 24, 1919, to February 26, 1926, inclusive, in the total amount of sixty-eight thousand eight hundred sixty-seven dollars twenty-two cents ($68,867.22) as shown by the lists of monthly payments accompanying the claims for refund attached hereto, marked Exhibits A, B, and C; and that the said Collector paid the said sum of money into the Treasury of the United States.

V

That on May 11, 1923, the plaintiff filed with the Collector of Internal Revenue at Chicago, Illinois, a claim for refund of
3 said excise taxes (claim no. 302611) paid by it during the period February 24, 1919, to March 31, 1923, in the amount of $48,080.83 (exhibit A, attached to this petition); that on March 25, 1925, the plaintiff filed with the said collector a claim for refund of said excise taxes (claim no. 343007) paid by it during the period April 1, 1923, to December 31, 1924, in the amount of $15,363.79, which claim was later corrected to agree with the collector's records of payments during said period in the amount of $15,734.93 (exhibit B, attached to this petition); that on September 15, 1926, the plaintiff filed with the said collector a claim for refund of said excise taxes (claim no. 355415) paid by it during the period January 1, 1925, to February 26, 1926, in the amount of $5,051.46 (exhibit C, attached to this petition).

VI

That on September 26, 1923, the Commission of Internal Revenue wrote a letter to the plaintiff saying that claim no. 302611 "is acordingly rejected in full." That on December 1, 1924, Deputy Commissioner of Internal Revenue R. M. Estes wrote a letter to the plaintiff with reference to claim no. 302611, saying "no action has been taken on your claim." That on October 7, 1926, Eugene McGovern, Acting Deputy Commissioner of Internal Revenue, wrote a letter to the plaintiff saying that said claim had been "taken up for consideration." That on June 23, 1927, Acting Commissioner of Internal Revenue C. R. Nash whote a letter to the plaintiff saying that "the action previously taken by this bureau in rejecting the claims is sustained." That on or about December 10, 1928, the Commissioner of Internal Revenue allowed said claim no. 302611
4 in the amount of $46,758.53 and rejected it in the amount of $1,322.30, which said allowance by the Commissioner was paid by check no. 327,180 in the amount of $68,241.58, including interest as provided by law.

VII

That the plaintiff is informed and believes that the amount refunded by the Commissioner as aforesaid was on account of manufacturer's excise taxes paid by it during the period May 1, 1919, to March 31, 1923, inclusive, in the amount of $46,758.53; and that the Commissioner rejected said claim no. 302611 (exhibit A) in the amount of $1,322.30, being excise taxes paid by the plaintiff during the period February 24 to April 30, 1919, for the reason that plaintiff billed said tax during said period of February to April, 1919, to its customers.

VIII

That on January 15, 1926, C. R. Nash, Acting Commissioner of Internal Revenue, wrote a letter to the plaintiff referring to claim no. 343007 (exhibit B) in tenor as follows:

"Reference is made to your claim filed for refund of $15,363.79, representing manufacturer's excise tax paid for the months of April, 1923, to December, 1924, inclusive.

"The claim is based upon the contention that ignition coils on which this tax was paid are general commercial commodities and not automobile parts, and the amount of tax paid thereon should be refunded.

"In this connection you are advised it is considered the ignition coils in question are automobile parts within the meaning of section 900 of the Revenue Act of 1921, and section 600 of the Revenue Act of 1924, and properly subject to tax as such.

"An attorney for your company was previously advised at a conference in this office that while the bureau holds iginition coils for automobiles are subject to tax, a case is now pending in the courts which may have a considerable bearing on this instant case. This office will hold to its previous position until a final decision in the matter is rendered. Should the court decision be adverse to this office's holdings, upon request from you that the claim be reopened, the claim will be taken up for reconsideration."

That on October 7, 1926, Eugene McGovern, Acting Deputy Commissioner of Internal Revenue, wrote a letter to the plaintiff with reference to claims nos. 302611 and 343007 (exhibits A and B), saying that "the claims have now been taken up for consideration." That on November 27, 1926, Deputy Commissioner of Internal Revenue R. M. Estes wrote a letter to the plaintiff with reference to claims nos. 302611, 343007 and 355415 (exhibits A, B, and C), saying that "the claims have now been taken up for consideration." That on June 23, 1927, Acting Commissioner of Internal Revenue C. R. Nash wrote a letter to the plaintiff referring to claims nos. 302611 and 343007, saying that "the action previously taken by this bureau

in rejecting the claims is sustained." That there had been no action taken by the bureau rejecting claim no. 343007 prior to June 23, 1927.

IX

That on or about December 13, 1928, the Commissioner of Internal Revenue allowed claim no. 343007 for $768.76, and on December 19, 1928, the Collector of Internal Revenue at Chicago, Illinois, transmitted to the plaintiff check no. 328,541 for $1,023.08 which included interest in the amount of $254.32. That plaintiff is advised and believes that said refund was the amount of tax paid by it on account of sales during the month of April, 1923. That plaintiff has received no written notification of the disallowance of said claim no. 343007, as required by section 3226 of the Revised Statutes, as amended by section 1113 (a) of the Revenue Act of 1926, and it does not know whether said claim has been rejected for the balance of $14,966.17.

X

That on June 24, 1927, Acting Commissioner of Internal Revenue C. R. Nash wrote a letter to the plaintiff with reference to claim no. 355415 (exhibit C), in tenor as follows:

"Reference is made to your claim for refund of $5,051.46 paid as manufacturer's excise tax on automobile parts and accessories.

"You were requested to advise within 20 days whether you intended to comply with Treasury Decision 4015 in the prosecution of your claim.

"Since no reply has been received from you within the time specified it is assumed you do not intend to prosecute the matter further along the lines suggested and your claim is hereby rejected for lack of evidence."

That on November 22, 1928, Acting Commissioner of Internal Revenue H. P. Mires wrote to the plaintiff, with reference to claim no. 355415, saying "the previous action taken in rejecting your claim must stand."

XI

That on May 14, 1927, Deputy Commissioner of Internal Revenue R. M. Estes wrote a letter to the plaintiff referring to plaintiff's three claims for refund (exhibits A, B, and C), calling attention to Treasury Decision 4015, covering the requirements to be observed by manufacturers in perfecting claims for the refunding of amounts in respect of the tax imposed by section 600 (3) of the Revenue Act of 1924 and/or section 900 (3) of the Revenue Acts of 1918 and 1921 and requesting plaintiff to advise him whether it intended to prosecute the claims and at the required time to furnish bond and proof of distribution as required by law and saying that if plaintiff did not answer within thirty days it would be presumed

that it did not intend to prosecute the matter further and that the claims would be rejected for lack of evidence.

XII

That of all the taxes paid by the petitioner to the United States as and for manufacturer's excise taxes on ignition coils manufactured and sold by it during the period February 24, 1919, to February 26, 1926, amounting to $68,867.22, only $1,322.30 was added to its invoices and billed to its customers. That during the period February 24, 1919, to April 30, 1919, the petitioner billed said amount of $1,322.30 to its customers by adding the same to its invoices of ignition coils manufactured and sold by it. That of said amount a considerable sum, the exact amount of which is not now determinable, was deducted from payments of invoices by plaintiff's customers and was never collected by plaintiff. That after it had followed the practice of adding the tax to the sales price of its
8 ignition coils for about three months, as aforesaid, plaintiff ceased to add the tax to the purchase price of the coils and no longer attempted to collect it from its customers and it thereafter absorbed the tax and paid it from its own funds without increasing the sales price of the coils and continued to report the sales of its ignition coils from month to month and to pay the tax thereon as required by the Commissioner of Internal Revenue. That no part of said $1,322.30 is sought to be recovered by this suit.

XIII

That the plaintiff alone is entitled to the refund of the amounts of taxes illegally and erroneously collected from it as set forth herein and that no other person or persons paid the same, either directly or indirectly and that no other person or persons has any right, either at law or in equity, to said refunds or any part thereof.

XIV

That said ignition coils so manufactured and sold by the plaintiff are not now and were not at the time of the sales or at any other time "primarily adapted" for use only in automobiles, as provided in section 900 (1), (2), or (3) of said Revenue Acts of 1918 and 1921 and section 600 (5) of the Revenue Act of 1924 or the Regulations of the Treasury Department adopted thereunder; that said ignition coils are not and were not automobile parts and/or automobile accessories, but are and were used for obtaining an electric spark of high voltage and intense heat on various types of internal combustion engines on motor boats, railway cars, speedsters,
9 cement mixers, farm and house lighting plants, tractors, stationary engines, marine engines, airplanes, automobiles, and for other purposes requiring an electric spark of high voltage and intense heat.

XV

That by reason of the facts herein set forth the induction coils manufactured and sold by the plaintiff on which the said tax was levied and collected were and are commercial commodities other than automobile parts and/or accessories and said commodities were not taxable under the provisions of section 900 of the Revenue Acts of 1918 and 1921 and/or section 600 of the Revenue Acts of 1924, and the assessment and collection of such taxes by the Commissioner of Internal Revenue as set forth herein was illegal and erroneous and the amount so collected should be refunded to the plaintiff.

XVI

That the plaintiff, the Jefferson Electric Manufacturing Company, avers that there is now justly due and owing to it by the United States the sum of twenty thousand, seventeen dollars, fifty-eight cents ($20,017.58) with interest thereon as provided by law, after allowing all just credits and offsets.

Wherefore, the plaintiff prays for judgment against the United States for $20,017.58, together with interest at the rate of 6% per annum from the dates of the respective payments of said taxes to the date of the payment of the judgment thereunder.

JEFFERSON ELECTRIC MANUFACTURING CO.,
By JOHN A. BENNAN, *President.*

CHESTER A. GWINN,
Attorney for Plaintiff,
Munsey Building, Washington, D.C.

GEO. P. McCABE,
CHARLES J. TRESSLER,
Of Counsel.

[*Duly sworn to by J. A. Bennan; jurat omitted in printing.*]

Exhibit A—to petition

Claim for

Abatement of tax assessed.
Credit against outstanding assessments.
X Refund of taxes illegally collected.
Refund of amounts paid for stamps used in error or excess.

STATE OF ILLINOIS,
County of Cook, ss:

Jefferson Electric Mfg. Co., 430 S. Green Street, Chicago, Illinois.

This deponent, being duly sworn according to law, deposes and says that this statement is made on behalf of the taxpayer named, and that the facts given below with reference to said statement are true and complete:

	Period	Year
	From: February	1919
	To: March	1923

1. Business in which engaged: Mfgrs. spark plugs and transformers.
2. Character of assessment or tax: Excise taxes.
3. Amount of assessment or stamps purchased $48,080.83
4. Reduction of tax liability requested (income and profits tax) ..... $
5. Amount to be abated ..... $
6. Amount to be refunded (or such greater amount as is legally refundable) $48,080.83
7. Dates of payment (see collector's receipts or indorsements of canceled checks) .....

(If statement covers income tax liability, items 8–11, inclusive, must be answered.)

8. District in which return (if any) was filed: Chicago, Ill.
9. District in which unpaid assessment appears .....
10. Amount of over payment claimed as credit ..... $
11. Unpaid assessment against which credit is asked; period from ..... to ..... $

Deponent verily believes that this application should be allowed for the following reasons:

That the above amount is a total of monthly excise taxes paid since March 1919, tabulation of which is attached hereto, which this corporation believes was paid in error, as this tax is not applicable to its products. The reasons for filing this claim for refund and this corporation's contention will be incorporated in a brief soon to be filed direct to the Commissioner of Internal Revenue.

(Signed) JAMES C. DALEY,
Treasurer.

Sworn to and subscribed before me this 11th day of May 1923.

E. J. BANIGAN,
Notary Public.

[NOTARIAL SEAL]

Jefferson Electric Mfg. Co.—Manufacturer's excise taxes paid

Year 1919:	
February } March }	$617.59
April	704.71
May	884.88
June	1,156.50
July	1,284.77
August	1,624.27
September	1,597.15
October	1,707.84
November	1,140.59
December	675.34
Total 1919	$11,393.64

Jefferson Electric Mfg. Co.—Manufacturer's excise taxes paid—Continued

13 Year 1920:	
January	$1,048.35
February	1,030.42
March	1,285.28
April	859.19
April	257.76
May	962.54
June	1,606.56
July	1,669.69
August	1,374.32
September	891.51
October	1,119.21
November	800.58
December	191.75
Total 1020	$13,097.15
Year 1921:	
January	$585.86
February	467.67
March	883.99
April	1,025.43
May	1,050.58
June	1,221.50
July	1,110.30
August	1,527.82
September	1,238.18
October	778.39
November	474.13
December	265.33
Total 1921	$10,629.18
14 Year 1922:	
January	$643.19
February	356.52
March	514.13
April	630.33
May	1,265.28
June	1,265.04
July	1,493.94
August	1,429.10
September	1,186.95
October	933.36
November	1,006.35
December	451.20
Total 1922	$11,175.39
Year 1923:	
January	$654.61
February	508.07
March	622.79
Total 1923	$1,785.47

15 *Exhibit B—to petition*

Claim for

Abatement of tax assessed.
Credit against outstanding assessments.
X Refund of taxes illegally collected.
Refund of amounts paid for stamps used in error or excess.

STATE OF ILLINOIS,
County of Cook, ss:

Jefferson Electric Mfg. Co., 501 South Green Street, Chicago, Illinois.

This deponent, being duly sworn according to law, deposes and says that this statement is made on behalf of the taxpayer named, and that the facts given below with reference to said statement are true and complete:

	Period	Year
	From April 1	1923
	To: Dec. 31	1924

1. Business in which engaged, Mfgrs. spark plugs and transformers.
2. Character of assessment or tax
3. Amount of assessment or stamps purchased $15,734.93
4. Reduction of tax liability requested (income and profits tax) $
5. Amount to be abated $
6. Amount to be refunded (or such greater amount as is legally refundable) $15,734.93
7. Dates of payment (see collector's receipts or indorsements of canceled checks)

(If statement covers income tax liability, items 8–11, inclusive, must be answered.)

8. District in which return (if any) was filed, Chicago, Ill.
9. District in which unpaid assessment appears
16 10. Amount of overpayment claimed as credit $
11. Unpaid assessment against which credit is asked; period from to $

Deponent verily believes that this application should be allowed for the following reasons:

That the above amount is a total of monthly excise taxes paid since April 1, 1923, a tabulation of which is attached hereto, which this corporation believes was paid in error, and that this is not applicable to its products. The reasons for filing this claim for refund and this corporation's contention have been incorporated in briefs filed direct with the Commissioner of Internal Revenue.

(signed) JEFFERSON ELECTRIC MFG. CO.
JOHN A. BENNAN, *Pres.*

Sworn to and subscribed before me this 21st day of March, 1925.

E. J. BANIGAN,
Notary Public.

[NOTARIAL SEAL]

Statement of monthly amounts of excise tax paid to the U.S. Govt. from April, 1923 to Dec., 1924, incl.

1923:

April	$768.76
May	1,026.41
June	1,245.83
July	1,236.90
August	1,261.62
September	1,072.56
October	1,049.54
November	704.99
December	655.80
Total	$9,022.41

Statement of monthly amounts of excise tax paid to the U.S. Govt: from April, 1923 to Dec., 1924, incl.—Continued

17	1924:		
	January	$649.99	
	February	394.61	
	March	584.20	
	April	760.58	
	May	678.76	
	June	758.98	
	July	634.03	
	August	546.96	
	September	505.44	
	October	521.34	
	November	354.04	
	December	323.59	
	Total		6,712.52
	Total claim		$15,734.93

Jefferson Electric Mfg. Co.—Manufacturer's excise taxes paid

	Year 1924:		
	December	$323.59	
	November	354.04	
	October	521.34	
	September	505.44	
	August	546.96	
	July	637.04	
	June	758.98	
	May	678.76	
	April	760.58	
	March	584.20	
	February	394.61	
	January	394.61	
	Total 1924		$6,460.15
18	1923:		
	December	649.99	
	November	655.80	
	October	704.99	
	September	1,049.54	
	August	1,072.56	
	July	1,261.62	
	June	1,236.90	
	May	1,245.83	
	April	1,026.41	
	March		
	February		
	January		
	Total		8,903.64
	Total April, 1923, to Dec. 31, 1924		$15,363.79

19 *Exhibit C—to petition*

Claim for

Abatement of tax assessed.
Credit against outstanding assessments.
X Refund of taxes illegally collected.
Refund of amounts paid for stamps used in error or excess.

STATE OF ILLINOIS,
County of Cook, ss:

Jefferson Electric Mfg. Co., 501 South Green Street, Chicago, Illinois

This deponent, being duly sworn according to law, deposes and says that this statement is made on behalf of the taxpayer named, and that the facts given below with reference to said statement are true and complete:

	Period	Year
	From: January 1	1925
	To: February 26	1926

1. Business in which engaged: Mfgrs. spark plugs and transformers.
2. Character of assessment or tax: Excise taxes.
3. Amount of assessment or stamps purchased $5,051.46
4. Reduction of Tax Liability requested (Income and Profits Tax) ..... $.....
5. Amount to be abated ..... $.....
6. Amount to be refunded (or such greater amount as is legally refundable $5,051.46
7. Dates of payment (see Collector's receipts or indorsements of canceled checks .....

(If statement covers income tax liability, items 8–11, inclusive, must be answered.)

8. District in which return (if any) was filed Chicago, Ill.
9. District in which unpaid assessment appears .....
10. Amount of overpayment claimed as credit ..... $.....
11. Unpaid assessment against which credit is asked; period from ..... to ..... $.....

20 Deponent verily believes that this application should be allowed for the following reasons:

That the above amount is a total of monthly excise taxes paid since January 1, 1925, tabulation of which is attached hereto, which this corporation believes was paid in error, and that this is not applicable to its products. The reasons for filing this claim for refund and this corporation's contentions have been incorporated in briefs filed direct with the Commissioner of Internal Revenue.

(*Signed*) JEFFERSON ELECTRIC MFG. CO.,
By J. C. DALEY.

Sworn to and subscribed before me this 11th day of September, 1926.

L. V. JENKINS,
Notary Public.

[NOTARIAL SEAL]

JEFFERSON ELECTRIC MFG. CO.—MANUFACTURER'S EXCISE TAXES PAID

Year 1925:

January	$371.07	
February	356.68	
March	366.60	
April	425.70	
May	434.39	
June	442.58	
July	470.98	
August	496.31	
September	388.83	
October	408.07	
November	233.31	
December	204.11	
		$4,598.63

JEFFERSON ELECTRIC MFG. CO.—MANUFACTURER'S EXCISE TAXES PAID—Continued

Year 1926:

January	$311.28	
February	141.50	
		452.83
Total January 1, 1924, to February 26, 1926		$5,051.46

21

II. *History of proceedings*

On May 3, 1929, the defendant filed a demurrer to the plaintiff's petition.

On January 13, 1930, the demurrer was submitted without argument.

On February 10, 1930, the court handed down the following opinion, by Littleton, J., overruling the demurrer:

III. *Opinion of the court on demurrer*

LITTLETON, Judge, delivered the opinion of the court:

This suit, instituted March 25, 1929, is for the recovery of $20,017.58, manufacturers' excise tax, paid under the provisions of sections 900 of the Revenue Acts of 1918 and 1921 and section 600 of the Revenue Act of 1924, with interest.

The defendant demurs to the petition upon the ground that it does not present a cause of action within the jurisdiction of this court.

The plaintiff, an Illinois corporation with offices at Chicago, is engaged in the manufacture and sale of ignition coils. For the purpose of this demurrer it is admitted that the ignition coils upon the sale of which the excise tax was collected, were not at the time of the sale, or at any other time, primarily adapted for use only in automobiles, that they were not automobile parts or automobile accessories.

For the period February 24, 1919, to February 26, 1926, inclusive, the plaintiff, pursuant to the requirements of the Commissioner, filed monthly lists of sales of ignition coils and, in order to avoid the imposition of penalties against it and distraint of its property, paid to the collector at Chicago the manufacturers' excise-tax levy on the sale of automobile parts or accessories by the statute mentioned, the total amount of such tax paid for the period mentioned being $68,867.22.

May 11, 1923, plaintiff filed a claim for refund of $48,080.83, the amount of tax paid for the period February 24, 1919, to March 31, 1923. March 25, 1925, it filed a claim for the refund of $15,363.79, being the tax paid for the period April 1, 1923, to December 31, 1924. September 15, 1926, it filed a third claim for refund of $5,051.46, being the tax paid for the period January 1, 1925, to February 26, 1926.

22 December 10, 1928, the Commissioner of Internal Revenue allowed the first claim, May 11, 1923, in the amount of $46,758.53, which he paid to plaintiff by check in the amount of $68,241.58, including interest as provided by law. He rejected the claim in the amount of $1,322.30, being that portion of the tax for the period February 24 to April 30, 1919, which was not borne by plaintiff but was billed to its customers.

December 13, 1928, the Commissioner allowed the second claim filed March 25, 1925, for $768.76 and on December 19, 1928, a refund check for $1,023.08, which included interest in the amount of $254.30, was delivered to plaintiff. The amount so refunded upon this claim was for the tax paid by plaintiff on account of sales during the month of April 1923. No action has been taken by the Commissioner upon this claim for other monthly periods embraced therein.

November 22, 1928, the Commissioner rejected the last claim filed on September 15, 1926, because plaintiff declined to give a bond conditioned upon the return to the Government of such amount of the tax refunded as was not distributed among the persons who purchased the articles for consumption upon which the sale of the tax was imposed.

The plaintiff paid from its own funds without any reimbursement whatever from any source all of the excise tax, amounting to $68,867.22, for the period February 24, 1919, to February 26, 1926, with the exception of $1,322.30, which the plaintiff added to its invoices and billed to its customers. A considerable portion of the tax, amounting to $1,332.30, the exact amount being unknown, was deducted by plaintiff's customers from invoices rendered when they made payments to plaintiff, and such amounts were never collected by the plaintiff. After plaintiff had followed the practice of adding the tax to the sales price of its ignition coils for about three months it ceased to add the tax to the purchase price or otherwise pass it on to the purchaser of the articles and no longer attempted to collect it from its customers, but the tax was wholly absorbed and paid by the plaintiff, month by month, from its own funds without reimbursement from any source. No portion of the said amount of $1,322.30 is sought to be recovered in this suit.

Defendant insists, in support of the demurrer, that, under section 424 of the Revenue Act of 1928, the court is without jurisdiction, because the suit was instituted after April 30, 1928; that the plaintiff's right to refund is within the discretion of the Commissioner; and that it has not established to his satisfaction that the tax for the period in question was in excess of the amount properly payable and that it does not appear that plaintiff has executed a bond as provided by paragraph 3 of subsection (a) of section 424. Defendant overlooks the fact that the section provides that a refund may be made without a bond if it is shown that the tax was wholly borne and paid by the manufacturer. In such case no bond is necessary under subsection (a) (3).

The plaintiff insists that this section did not make the question whether it was entitled to a refund of excise taxes paid discretionary with the Commissioner of Internal Revenue, nor did it require the filing of a bond if the tax was wholly borne and paid by the manufacturer without reimbursement from the purchaser of the
23 article upon the sale of which the tax was imposed; that if the section makes its right of recovery depend upon the institution of suit prior to April 30, 1928, the section is in violation of the fifth and fourteenth amendments to the Constitution.

For the reasons stated by the court in its opinion in Boyle Valve Company v. The United States, K-66, this date decided, we are of opinion that the defendant's demurrer in this case is not well taken and should be overruled. It is so ordered.

WILLIAMS, Judge; GREEN, Judge; GRAHAM, Judge; and BOOTH, Chief Justice, concur.

IV. *General traverse—Filed March 1, 1930*

And now comes the Attorney General, on behalf of the United States, and answering the petition of the claimant herein, denies each and every allegation therein contained; and asks judgment that the petition be dismissed.

CHARLES P. SISSON,
Assistant Attorney General.

24 V. *Defendant's counterclaim, filed September 17, 1930, by leave of court*

The United States, the defendant in the above-entitled case, as grounds for counterclaim against the plaintiff in said action, states:

That the plaintiff is a corporation organized and doing business under the laws of the State of Illinois.

That the plaintiff, from February 1919 to December 1924, inclusive, was engaged in the manufacture and sale of ignition coils which were manufactured for and adapted to the special purpose of being used as or to replace component parts of passenger automobiles and automobile trucks.

That the plaintiff, because of said manufacture and sale, filed excise-tax returns monthly for the taxable periods February 1919 to March 1923, inclusive, showing the amount of tax due thereon
25 which was duly assessed on such returns by the Commissioner of Internal Revenue, and paid by plaintiff to the Collector of Internal Revenue at Chicago, Illinois, in the total sum of $48,080.83 under the provisions of section 900 of the Revenue Acts of 1918 and 1921.

That plaintiff likewise made and filed excise-tax returns monthly for the taxable periods April 1923 to December 1924, inclusive, showing the amount of tax due thereon, which was duly assessed on such returns by the Commissioner of Internal Revenue, and paid by plaintiff to the Collector of Internal Revenue at Chicago,

Illinois, in the total amount of $15,734.93 under the provisions of section 900 of the Revenue Act of 1921 and section 600 of the Revenue Act of 1924.

That none of the articles with respect to which the taxes aforesaid were assessed and paid were sold to the manufacturer of automobile trucks or other automobiles.

That on or about November 28, 1928, the Commissioner of Internal Revenue, acting under the erroneous impression that as a matter of law the manufacture and sale of ignition coils were not subject to excise taxes under the provisions of the aforesaid revenue acts and under the erroneous understanding of the facts induced by plaintiff, and with the mistaken belief that the amount of said taxes had not been passed on to the purchasers of the articles in question erro-
26 neously ordered to be refunded to plaintiff of the aforesaid taxes of $48,080.83 the sum of $46,758.53, together with interest amounting to $21,483.05 which total amount of $68,241.58 was wrongfully paid to the plaintiff out of moneys in the Treasury of the United States on December 7, 1928.

That the Commissioner of Internal Revenue on November 30, 1928, because of errors as aforesaid, ordered the refund to plaintiff of $786.76 of said excise taxes paid for the period April 1923, together with interest thereon amounting to $254.32, which total amount of $1,023.08 was wrongfully paid to plaintiff out of moneys in the Treasury of the United States on December 19, 1928.

Wherefore, by reason of the premises recited herein, plaintiff is indebted to the United States in the sum of $69,264.66, with interest at the rate of 6% per annum upon the sum of $68,241.58 from December 7, 1928, and on the sum of $1,023.08 from December 19, 1928, for which the defendant prays judgment against the plaintiff, with costs.

Respectfully submitted.

CHARLES B. RUGG,
Assistant Attorney General.

RALPH C. WILLIAMSON,
Attorney.

27 VI. *Change of attorneys of record*

The petition in this case was filed by Chester A. Gwinn, Esq., as attorney of record.

On December 31, 1931, Mr. Gwinn withdrew his appearance as attorney of record.

On the same date Adrian C. Humphreys, Esq., filed a power attorney from the plaintiff, and was entered as attorney of record.

VI. *Argument and submission of case*

On May 9, 1932, this case was argued and submitted on merits by Mr. Robert N. Anderson, for the plaintiff, and by Mr. Ralph C. Williamson, for the defendant.

28 VII. *Special findings of fact, conclusion of law and opinion of the court by Whaley, J.—Filed March 13, 1933*

Mr. Robert N. Anderson, for the plaintiff. Messrs. Adrian C. Humphreys, George P. McCabe, and Charles J. Tressler were on the briefs.

Mr. Ralph C. Williamson with whom was Mr. Assistant Attorney General Charles B. Rugg for the defendant.

This case having been heard by the Court of Claims, the court, upon the evidence and the report of a commissioner, makes the following

Special findings of fact

1. Plaintiff is a corporation organized under the laws of the State of Illinois and is principal office is in Chicago in that State.

2. During the period beginning May 1919, to but not including March 1926, plaintiff sold ignition coils, manufactured by it, hereinafter more fully described, and beginning June 20, 1919, and ending April 21, 1926, periodically paid to the defendant excise taxes thereon, aggregating $67,544.87, for the periods, in the amounts and on the dates, as follows:

Taxable period	Date of payment	Amount	Taxable period	Date of payment	Amount
May 1919	June 20, 1919	$884.88	November 1922	December 19, 1922	$1,006.35
June 1919	August 5, 1919	1,156.50	December 1922	January 23, 1923	451.20
July 1919	September 5, 1919	1,284.77	January 1923	February 21, 1923	654.61
August 1919	October 8, 1919	1,624.27	February 1923	March 31, 1923	508.07
September 1919	November 4, 1919	1,597.15	29 March 1923	April 14, 1923	622.79
October 1919	December 3, 1919	1,707.84	April 1923	May 25, 1923	768.76
November 1919	January 6, 1920	1,140.59	May 1923	June 19, 1923	1,026.41
December 1919	February 9, 1920	675.31	June 1923	July 25, 1923	1,215.83
January 1920	March 8, 1920	1,048.35	July 1923	August 28, 1923	1,236.90
February 1920	April 6, 1920	1,030.42	August 1923	September 24, 1923	1,261.62
March 1920	June 30, 1920	1,285.28	September 1923	October 17, 1923	1,072.46
April 1920	June 30, 1920	1,116.95	October 1923	November 21, 1923	1,049.54
May 1920	July 2, 1920	962.54	November 1923	December 22, 1923	704.99
June 1920	July 30, 1920	1,606.55	December 1923	February 6, 1924	655.80
July 1920	August 25, 1920	1,669.69	January 1924	February 26, 1924	649.99
August 1920	September 25, 1920	1,374.32	February 1924	March 26, 1924	394.61
September 1920	October 30, 1920	891.51	March 1924	April 21, 1924	584.20
October 1920	December 2, 1920	1,119.21	April 1924	May 20, 1924	760.58
November 1920	January 11, 1921	800.58	May 1924	June 11, 1924	678.76
December 1920	January 31, 1921	191.75	June 1924	July 23, 1924	758.98
January 1921	March 2, 1921	585.86	July 1924	August 19, 1924	634.03
February 1921	April 7, 1921	467.67	August 1924	September 23, 1924	546.96
March 1921	April 19, 1921	883.99	September 1924	October 10, 1924	505.44
April 1921	June 29, 1921	1,025.43	October 1924	November 20, 1924	521.34
May 1921	July 13, 1921	1,050.58	November 1924	December 24, 1924	354.04
June 1921	August 3, 1921	1,221.50	December 1924	January 19, 1925	323.59
July 1921	September 22, 1921	1,110.30	January 1925	February 16, 1925	371.07
August 1921	September 28, 1921	1,527.82	February 1925	March 25, 1925	356.68
September 1921	October 21, 1921	1,238.18	March 1925	April 10, 1925	366.60
October 1921	November 18, 1921	778.30	April 1925	May 14, 1925	425.70
November 1921	December 28, 1921	474.13	May 1925	June 27, 1925	434.39
December 1921	January 18, 1922	265.33	June 1925	July 15, 1925	442.58
January 1922	Feburary 15, 1922	643.19	July 1925	August 17, 1925	470.98
February 1922	March 27, 1922	356.52	August 1925	September 18, 1925	496.31
March 1922	April 18, 1922	514.13	September 1925	October 15, 1925	388.83
April 1922	May 10, 1922	630.33	October 1925	November 27, 1925	408.07
May 1922	June 28, 1922	1,265.28	November 1925	December 21, 1925	233.31
June 1922	July 26, 1922	1,265.04	December 1925	January 22, 1926	204.11
August 1922	August 25, 1922	1,493.94	January 1926	February 25, 1926	311.28
August 1922	September 25, 1922	1,429.10	February 1926	April 21, 1926	141.50
September 1922	October 25, 1922	1,186.95			
October 1922	December 1, 1922	933.36	Total		67,544.87

3. On May 28, 1923, plaintiff filed with the appropriate collector of internal revenue a claim for refund of excise taxes paid May 31, 1919, and June 10, 1919, and of the aforesaid taxes paid June 20, 1919, to April 14, 1923, inclusive, amounting in the aggregate to $48,080.83, for the period beginning March 1919, and ending in March 1923, on the ground that its ignition coils were not parts for automobiles or motor cycles within the meaning of the excise tax laws. The Commissioner of Internal Revenue September 26, 1923, rejected the claim in full. Thereafter, on new evidence, the commissioner reopened and reconsidered the claim and allowed $46,758.53 on or about November 28, 1928, holding to his former rejection to the extent of $1,322.30 on the ground that it represented tax passed on to customers. Said $1,322.30 was for the months of March and April 1919, and no part of same is sought to be recovered in this suit.

4. On March 25, 1925, plaintiff filed with said collector claim for refund of $15,363.79, later amended to $15,734.93, being so much of the aforesaid taxes as was paid beginning May 25, 1923, and ending January 19, 1925, for the period April 1923 to December 1924, inclusive, on the same ground as for claim described in Finding 3, *supra*. The claim was at first rejected, January 15, 1926, subject to reconsideration in the advent of an adverse decision by the courts in a similar case. The commissioner reopened and reconsidered the claim on new evidence and on or about November 30, 1928, allowed $768.76, being the tax paid May 25, 1923, for the month of April 1923, and held to his rejection of the balance, viz, $14,966.17, on the ground that said balance of $14,966.17 had been passed on to customers without refund and that bond specified in Treasury Decision 4195 had not been furnished.

5. On September 15, 1926, plaintiff filed with the appropriate collector claim for refund of $5,051.46, being approximately the balance of the aforesaid taxes paid beginning February 16, 1925, and ending April 21, 1926, for the period January 1925 to February 1926, inclusive, the exact amount of which was $5,051.41, the ground being the same as stated in the case of the two previous claims. The claim was rejected by the commissioner June 24, 1927, for lack of evidence, and on November 22, 1928, on reopening and reconsideration of new evidence, the rejection was adhered to, the ground thereof being that the tax had been passed on to customers, without refund, and without submission of bond specified in Treasury Decision 4195.

6. There has been paid to plaintiff by the defendant, on the aforesaid claims for refund, the following amounts, with interest as indicated:

Refund claims	Allowed and paid		Rejected and unpaid
	Tax	Interest	
[1] $46,758.53	$46,758.53	$21,483.05	
15,734.93	768.76	254.32	$14,966.17
[2] 5,051.41			5,051.41
67,544.87	47,527.29	21,737.37	20,017.58

[1] $48,080.83 less $1,322.30 not sued for.
[2] $5,051.46 less 5 cents error.

Plaintiff sues for recovery of the sum of $20,017.58, the unpaid portion of the refund claims, with interest, and defendant counterclaims the amounts paid thereon, $47,527.29 tax and $21,737.37 interest, total $69,264.66, with interest.

7. For the taxable period in question, viz., May 1919 to the end of February 1926 plaintiff, in the sale of ignition coils, invoiced its catalogue prices to all customers, and did not add thereto any amounts representing excise taxes, or collect from its customers amounts additional to the catalogue prices. The catalogue prices so invoiced and collected, were transferred by plaintiff to its general ledger account in totals without separation into any elements, such as tax, charges for parcel post, insurance. The excise tax which it considered payable was set up in an additional account styled "Excise Tax Expense."

8. For a part of the taxable periods in question plaintiff made on its invoices to customers certain notations with respect to the excise tax which it considered applicable.

Up to May 19, 1923, plaintiff made no such notations on its invoices to customers.

Beginning May 19, 1923, up to December 29, 1925, it was plaintiff's practice to note on its invoices to customers the following: "On automotive accessories 1/21 of amount indicated herein equals 5% excise tax. 20/21st of amount indicated equal price," during the period when the 5% tax rate was in effect, and substantially the same notation during the period when the 2½% rate was in effect, "1/21" being changed to "1/41" and "20/21" to "40/41." It does not definitely appear what the practice was thereafter as to notations on invoices.

9. Plaintiff's catalogue prices were not increased or decreased by reason of the imposition of the excise tax on automobile parts or accessories.

10. It is not possible from the state of the record to determine the amount of excise tax paid for the period when plaintiff made the aforesaid tax notations on invoices sent to its customers.

11. The ignition coil is a form of transformer and is a device that takes a low voltage, relatively high amperage current, and
31 transforms it to a high voltage, relatively low amperage current, the resulting voltage being sufficiently high to bridge

the spark gap of the spark plug, thereby supplying the flame which ignites the gas in the cylinder of an internal-combustion engine.

Ignition coils were in use before the advent of the automobile and are a development from an invention many years ago by Ruhmkorff. Ignition coils were first generally used in automobiles about the year 1914 when they were substituted for the magneto, and batteries came into use for the lighting system. They were not specially designed for automobiles. Prior to such automobile use the coil was being used for stationary internal-combustion engines; also for motorcycles, and marine works.

Plaintiff sold the ignition coils, manufactured by it and involved in this suit, for the most part to jobbers and distributors, and did not know for what special purpose such coils were to be used. Some were sold to manufacturers, wholesalers, mail-order houses, and dealers. None of its coils were sold for original equipment.

The fundamental part of the ignition coil is its internal construction and is the same for any internal-combustion engine. The coil must be held or mounted in position and for that purpose plaintiff manufactured and sold brackets. The brackets were sold and went out from the factory separately from the coils.

Plaintiff made 15 or 20 different kinds of ignition coils, and they were interchangeable between different types of gas engines, depending upon the size and compactness. The adaptability depended upon the bracket, lead wires, and such things, and not upon the internal construction of the coil.

Plaintiff's ignition coils were equally adapted to marine, automotive, tractor, truck, motorcycle, or airplane engines, and to outboard motors and engines for concrete mixers. They were manufactured and sold for general use and were not primarily adapted or specially designed for use as a component of automobiles, motorcycles, automobile trucks, or automobile wagons.

Conclusion of law

Upon the foregoing special findings of fact, which are made a part of the judgment herein, the court decides as a conclusion of law that plaintiff is entitled to recover $20,017.58, with interest, and that defendant is not entitled to recover on its counterclaim.

It is therefore adjudged and ordered that plaintiff recover of and from the United States the sum of twenty thousand seventeen dollars and fifty-eight cents ($20,017.58), with interest thereon as provided by law, and that the counterclaim be dismissed.

Opinion

Whaley, Judge, delivered the opinion of the court:

The plaintiff brings this suit to recover excise taxes in the sum of $20,017.58 collected on ignition coils manufactured and sold by

it for the taxable period May 1923 to February 1926 inclusive. The sum sued for is the balance on a claim for refund of $67,544.87, the defendant having refunded $47,527.29 with interest. A
32 counterclaim has been filed by the defendant to recover the amount so refunded. The only question involved is whether ignition coils manufactured and sold by the plaintiff were subject to tax as automobile parts or accessories under section 900 of the revenue acts of 1918 and 1921 and section 600 of the Revenue Act of 1924, 40 Stat. 1057, 1122, 42 Stat. 227, 291, 43 Stat. 253, 323.

The facts in this case are similar in most respects to those in the case of Atwater Kent Manufacturing Company, 62 C.Cls. 419, in which the plaintiff was permitted to recover. We can find no difference in principle between these cases. All of plaintiff's sales of ignition coils were taxed whether they were advertised for use on automobiles or not; the entire amount of excise tax paid during the period involved has been proved; none of plaintiff's ignition coils were especially adapted for use in automobiles; none of plaintiff's ignition coils were sold by plaintiff to automobile manufacturers, dealers, or owners for use on automobiles; all of plaintiff's ignition coils were equally adapted for use on any internal-combustion engine, and as the plaintiff sold to wholesalers, jobbers, mail-order houses and dealers, and as their use was general in any kind of internal-combustion engine, it was not within plaintiff's knowledge to what particular use they were put.

The ignition coils were not specially designed for or primarily adaptable to automobiles and therefore are not within the provisions of the statute and regulations. See Wells Manufacturing Company v. The United States, 66 C.Cls. 283; Milwaukee Motor Products, Inc. v. The United States, 66 C.Cls. 295.

The plaintiff is entitled to recover. The counterclaim is dismissed. It is so ordered.

Williams, Judge; Littleton, Judge; and Green, Judge, concur.

Booth, Chief Justice, took no part in the decision of this case on account of illness.

33 VIII. *Judgment*

At a Court of Claims held in the city of Washington on the 13th day of March, A. D. 1933, judgment was ordered to be entered as follows:

Upon the special findings of fact, which are made a part of the judgment herein, the court decides as a conclusion of law that plaintiff is entitled to recover.

It is adjudged and ordered that the plaintiff recover of and from the United States the sum of twenty thousand seventeen dollars and fifty-eight cents ($20,017.58), with interest thereon as provided by law, and that the counterclaim be dismissed.

34 [Clerk's certificate to foregoing transcript omitted in printing.]

35 [Endorsement on cover:] File No. 37774, Court of Claims, Term No. 171, The United States, petitioner, vs. Jefferson Electric Manufacturing Company. Petition for a writ of certiorari and exhibit thereto. Filed June 13, 1933. File No. 171 O. T. 1933.

U. S. GOVERNMENT PRINTING OFFICE: 1933

Supreme Court of the United States

Order allowing certiorari

Filed October 9, 1933

The petition herein for a writ of certiorari to the Court of Claims is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

16383—33